



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Econ, Incorporated

File: B-222577

Date: July 28, 1986

DIGEST

Contracting agency properly rejected protester's late hand-delivered proposal where the protester arrived only a few minutes before proposals were due and was delayed from entering the building as a result of the agency's security procedures, since the agency security guard's actions were based on a reasonable interpretation of the procedures then in effect and late receipt of the proposal was due to the protester's failure to allow sufficient time to deliver the proposal.

DECISION

Econ Incorporated protests any award under request for proposals (RFP) No. DE-RP01-86CE40762, issued by the Department of Energy (DOE) for engineering, economic and programmatic analysis and technology transfer assistance to the Office of Industrial Programs. The protester challenges DOE's rejection of its proposal as late, arguing that the proposal was received late only because a DOE security guard improperly delayed the protester's representative from entering the DOE building and submitting the proposal on time. We deny the protest.

With regard to the time, date and place for submission of proposals, section L.007 provided:

"Proposals must be received at:

Department of Energy
Office of Procurement Operations
Forrestal Building, Room 1J-005
1000 Independence Avenue, S.W.
Washington, D.C. 20585

Attn: Document Control Specialist (MA-451)
by NO LATER THAN 4:30 P.M. local prevailing time on April 18, 1986."

Amendment No. 1 to the RFP changed the date for receipt of proposals to April 30. Section L.047 of the RFP also provided:

"(b) Handcarried Proposals.

If the offeror elects to forward the proposals by means other than the U.S. Mail, he assumes the full responsibility of insuring that the proposals are received by the

036189

date and time specified in RFP Part IV - SECTION L, Provision L.007. Such proposals must be closed and sealed as if for mailing."

According to the protester, its proposal was hand-delivered to DOE by an Econ employee who had been coming regularly to the DOE building specified in the RFP in connection with other contract work Econ was performing for DOE, and as a result, had a photo identification badge issued by DOE. On April 30, the day proposals were due, the employee was driven to DOE by the vice president of Econ, who states that he checked his watch as the Econ employee entered the DOE building carrying the proposal, and noted that it was "a few minutes before 4:30." The parties agree that the Econ employee entered the door of the building closest to the room where proposals were to be filed and approached the security guard desk. The proposal room is a short distance behind the guard desk.

Two people seeking to enter the building already were waiting to be processed at the guard desk. According to the protester, the Econ employee, after showing the guard her DOE badge, attempted to pass the guard desk on her way to the proposal room. She states that on previous visits to DOE she routinely was allowed to proceed after showing her badge, and therefore did not expect to be detained at the guard desk. The guard advised her, however, that she could not proceed and required her to wait at the desk. The protester states that it took approximately 5 minutes for the guard to finish processing the two visitors ahead of the Econ employee.

The parties disagree as to the details of the conversation that then took place between the employee and the guard. The protester maintains that even though the employee identified her parcel as a proposal to be delivered to the room specified in the RFP, the guard insisted that she provide the name of a DOE employee who could be called to accept the package. Since the RFP did not specify an individual by name, the employee gave the guard the contracting officer's name. According to DOE, the Econ employee did not notify the guard that the proposal was to be filed in the room designated in the RFP and insisted on speaking to the contracting officer. In addition, DOE maintains that the employee did not display her identification badge. The parties agree that the guard ultimately located the contracting officer after about 15 minutes. The contracting officer came to the guard desk and had the protester's proposal time-stamped as received at 4:45 p.m., but advised the Econ employee that the proposal was late and probably would not be accepted.

As a preliminary matter, we reject DOE's argument that the protester has failed to show that its employee arrived before 4:30, the time for receipt of proposals. The protester submitted an affidavit from the vice president of Econ, who accompanied the employee to the DOE building, stating that he checked his watch as the employee entered the building and noted that it was a few minutes before 4:30. To counter the affidavit, DOE submitted a statement from the DOE employee responsible for accepting the proposals on April 30, which states that she logged in

another proposal at 4:22 p.m. and did not see anyone at the guard desk at that time. DOE also submitted a statement from the security guard that the Econ employee arrived at "approximately 4:30." In our view, neither of these statements necessarily contradicts the protester's contention that its employee arrived a few minutes early since (1) the protester does not even contend that its employee was at the guard desk at 4:22 p.m.; and (2) the guard's statement that the employee arrived at approximately 4:30 reasonably could mean that she arrived a few minutes before 4:30, as Econ contends.

The record shows that Econ's proposal was not stamped as received by DOE until 4:45 p.m., 15 minutes after the time set for receipt of proposals. A late hand-delivered proposal may be considered where improper government action was the paramount cause for the late submission and consideration of the proposal would not compromise the integrity of the competitive procurement process. Vikonics, Inc., B-222423, Apr. 29, 1986, 86-1 CPD ¶ 419. Improper government action in this context is defined as affirmative action that makes it impossible for the offeror to deliver its proposal on time. Id. A late proposal should not be considered, however, if the offeror significantly contributed to the late receipt by not acting reasonably in fulfilling its responsibility of delivering a hand-carried proposal to the proper place by the proper time, even though late receipt may have been caused in part by erroneous government action. Monthei Mechanical, Inc., B-216624, Dec. 17, 1984, 84-2 CPD ¶ 675.

The parties agree that two visitors to DOE already were waiting at the guard desk when the Econ employee arrived. According to the protester, the guard processed the two visitors in turn, first checking the identification of the first visitor, then calling and waiting for a DOE escort to arrive before beginning to process the second visitor. In a May 1 letter to the contracting officer describing the circumstances surrounding submission of its proposal, the protester stated that processing the two visitors took about 5 minutes^{1/}, an estimate which appears reasonable in light of the protester's description of the guard's method of processing them. Thus, assuming the Econ employee arrived at DOE just a few minutes before 4:30, it was already past 4:30, and its proposal was already late, before the guard even began processing the Econ employee. Whether late receipt of the proposal was due to improper government action therefore depends on whether the guard's initial decision to detain the employee constituted an improper action which was the paramount cause of the late receipt. We find both that the guard acted reasonably and that the Econ employee significantly contributed to the late receipt by arriving only a few minutes before the time set for submitting proposals.

^{1/} Subsequent to the May 1 letter, the protester submitted affidavits from several Econ employees, none of which contradicts this statement.

DOE does not dispute the protester's assertion that DOE contractor personnel like the Econ employee usually are allowed access to the building after having their badges checked by the security guard. On the day proposals were due, however, there were heightened security procedures in effect which provided in part as follows:

"Non-Departmental courier personnel will no longer be permitted access into DOE-controlled space. All such courier personnel will be directed to the guard reception desk and the intended recipient will be contacted. The intended recipient shall be responsible for pickup/retrieval of parcels, and so forth, from the courier. The courier will not be permitted to leave any items in the lobby areas to await pickup. The courier shall remain with the parcel(s) until the contact accepts the parcel(s). All such parcels shall then be subject to security inspection."

Consistent with these procedures, the Econ employee was required to wait until the guard finished processing the two earlier visitors and could contact someone to accept her package.^{2/} The guard's actions were based on a reasonable interpretation of the security procedures then in effect.

The protester argues that it had no specific notice of the heightened security procedures and was entitled to rely on its employee's experience of being given direct access to the building after displaying her badge in calculating the time required to make a timely delivery. We disagree. Section L.047 of the RFP put offerors on notice of their responsibility to ensure that hand-delivered proposals reach the designated location on time. Delays in gaining access to government buildings are not unusual and should be expected. National Blower and Sheet Metal Co., Inc., B-194895, Oct. 3, 1979, 79-2 CPD ¶ 240. Even though the protester's prior experience did not involve delay in gaining access to the DOE building, we cannot conclude that the security guard unreasonably delayed the Econ employee when she was acting in accordance with a reasonable interpretation of the entrance policy then in effect. Id. Rather, by allowing only a few minutes to file its proposal, the protester did not act reasonably to fulfill its obligation to file its proposal on time and significantly contributed to its late receipt. Vikonics, Inc., B-222423, supra; Alpine Aircraft Charters, Inc., B-178984, Oct. 30, 1973.

^{2/} The protester maintains that the security procedures cited applied only to commercial couriers, not DOE contractor employees. In our view, the security guard reasonably interpreted the procedures as extending to all non-DOE personnel making deliveries. In addition, the DOE procedures also provided that all parcels were subject to inspection before being taken into the building. The Econ employee thus would have been subject in any event to the delay necessary to inspect her package.

In view of our findings that the security guard's actions were based on a reasonable interpretation of the established procedures and that late receipt of the proposal was due to the protester's failure to allow sufficient time for delivery of the proposal, we conclude that DOE acted properly in refusing to accept the late proposal. Since the proposal already was late after the initial delay at the guard desk due to the protester's failure to allow sufficient time for delivery, we need not consider the subsequent events or resolve the factual disputes between the parties in connection with the guard's actual processing of the Econ employee.

The protest is denied.

for *Seymour E. Gross*
Harry R. Van Cleave
General Counsel